



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE
DIRECTOR

December 20, 1991
AO-91-28

James L. Allen, Esq.
Ely & King
One Financial Plaza
1350 Main Street
Springfield, MA 01108

Re: Inaugural Expenditures

Dear Mr. Allen:

This letter is response to your November 26, 1991, request for an advisory opinion regarding the legality of certain inaugural expenditures by a political committee or a separate, privately funded committee.

You have stated that The Markel Committee (hereinafter the "Political Committee") is a political committee subject to M.G.L. c.55, the campaign finance laws, which raised and expended funds under that statute for the successful election of Robert T. Markel to the office of Mayor of Springfield. Mr. Markel is currently an elected incumbent city councilor in the City of Springfield. Mr. Markel and others are presently incurring expenses associated with the transition of government between the administrations of Mayor-Elect Markel and Mayor Hurley. In addition, there will be expenses incurred with respect to Mr. Markel's inauguration.

You have asked a number of general questions relative to inaugural expenses. Your questions concern the appropriateness of paying for certain inaugural expenses by the Political Committee as well as the propriety of raising funds for the payment of certain inaugural expenses by means of a private fund or trust (hereinafter the "Transition Committee"). Rather than answer your questions individually, I will address them in the course of discussing the issue of inaugural expenses.

M.G.L. c.55, s.6 provides, in pertinent part, that political committees such as The Markel Committee,

may receive, pay and expend money or other things of value for the enhancement of the political future of the

candidate . . . , for which the committee was organized so long as such expenditure is not primarily for the candidate's or any other person's personal use, provided, however, that the director shall establish reasonable rules and regulations concerning such expenditures . . .

The phrase "personal use," in the context of the campaign finance laws and the regulations promulgated pursuant thereto, is a term of art which refers to any use with a primary purpose other than influencing the nomination or election of an individual or candidate or, in the case of a political committee such as The Markel Committee, seeking the enhancement of Mr. Markel's political future through reasonable and necessary expenditures (hereinafter referred to as a "political" use or expenditure). Such personal use may include business, governmental, legislative, family and social use. See AO-91-06. See also M.G.L. c.55, s.1, "Expenditure".

Pursuant to M.G.L. c.55, ss. 3 and 6, the director has issued regulations regarding expenditures by political committees. More specifically, 970 CMR 2.06(3) provides that the Political Committee may make expenditures authorized by 970 CMR 2.05(2)(a) through (v) which include authorization to pay and expend reasonable and necessary:

- (t) Inaugural expenses, which may include room rental, printing, decorations, entertainment, food and beverages. Nothing contained in this division shall be construed to permit expenditures for costs associated with the transition of government (emphasis added).

Reading the law and regulations together in the context of an inauguration, the question that must be answered in each instance is whether the purpose of an expense is primarily "political" or "personal."

If the expense is primarily political, then it is a lawful expense of a political committee. It follows that any contribution, in-kind or of money, would be subject to the law's contribution limitations and that all funds must flow through and be raised and expended by the Political Committee. See M.G.L. c.55, ss.1 "Contribution" and 7. It also logically follows that no part of such an event could be funded by the Transition Committee.

The regulations recognize that inaugural expenses associated with what the Office views as the celebratory aspects of a successful election such as an inaugural ball are appropriate political expenditures. Fundamentally, such events have a dual purpose of celebrating a victory and thanking the victor's supporters. See also 970 CMR 2.06(3)(b). Therefore, a political committee is authorized to make expenditures for the rental of a hall and payment for food, beverages, entertainment, printing, security and related expenses for an inaugural ball. Whether the inaugural ball is open to everyone or by invitation only and whether admission is free or subject

to an admission fee is irrelevant. Most such events are primarily political and, therefore, all expenses for an inaugural ball must be paid for by the Political Committee and/or other political committees that may be sponsoring the event.¹

If an inaugural expense is primarily governmental (i.e., personal) then it cannot be lawfully paid for by the Political Committee but must be paid for by the municipality or by means of privately raised funds. While a successful transition of government may have an impact on a candidate's political future, its primary purpose is governmental and costs thus associated with the transition are prohibited by the regulations. Similarly, it is the opinion of this Office that official inauguration ceremonies are primarily governmental. Thus, the Political Committee may not make expenditures for an inaugural ceremony. Rather, such events must be paid for by the municipality and/or from private funds such as those raised by the Transition Committee. Donations to such a Transition Committee would not be contributions subject to M.G.L. c.55. Therefore, such donations might be made in unlimited dollar amounts by individuals, corporations and other entities and accepted by the Transition Committee without public disclosure of receipts and expenditures for purposes of M.G.L. c.55.

I note that donations to the Transition Committee may be restricted by the requirements of M.G.L. c. 268A, the conflict-of-interest law. Therefore, I strongly recommend that you consult the State Ethics Commission if you have not done so already. Also, there may be other laws such as the public records law or municipal ordinances which may govern the maintenance and disclosure of receipts and expenditures by the Transition Committee. Again, the appropriate agencies should be consulted on these matters.

In conclusion, it is the opinion of this Office that the Political Committee may not pay for the expenses associated with the formal swearing-in ceremony of a governmental official but may pay for any expenses associated with a celebratory function such as a victory or inaugural ball. Similarly, the Transition Committee may not pay for the expenses associated with such a ball but may pay for expenses associated with transition costs as well as the formal swearing-in ceremony.

This opinion is designed to provide guidance relative to the general questions which you asked. The opinion should not be viewed as an approval of any specific fund-raising

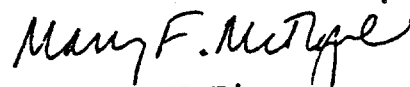
1. This conclusion obviates the need to address whether the Political Committee can or cannot sell tickets to a privately funded inaugural ball. Since an inaugural ball is primarily a political event, it cannot be privately funded.

activity or expenditure by either the Political Committee or the Transition Committee. If there are specific expenditures or activities that you wish to discuss further please do not hesitate to contact this Office.

This opinion is based solely on the representations made in your letter and has been rendered solely in the context of M.G.L. c.55.

Please do not hesitate to contact this Office if you have any additional questions.

Very truly yours,


Mary F. McTigue
Director

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